



2015-013

STATE OF ALABAMA
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November 6, 2014

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County Commissions – Employees,
Employers, Employment – Health
Insurance – Funds – Prescriptions –
Debt

The Mobile County Commission may not guarantee the debt of its employees and retirees for prescription drug medication outside the benefit of the insurance policy provided by the county.

Dear Mr. Ross:

This opinion of the Attorney General is issued in response to your request on behalf of the Mobile County Commission.

QUESTION

May the Mobile County Commission (“Commission”) guarantee payment of prescription drug costs for the employees of the Commission?

FACTS AND ANALYSIS

According to your request, the Commission provides health and dental insurance for its employees and retirees through the Alabama Local Government Health Insurance Plan (“LGHIP”). The health insurance provided by the Commission includes prescription drug coverage.

According to your request, however, covered persons are required to pay the full cost of prescription medication at the time of purchase. The covered persons must then file a claim whereupon they are reimbursed 80 percent of the amount paid. You indicate some covered persons lack the financial solvency to pay the full cost of the prescription medications at the time of purchase and that the Commission wishes to assist these individuals, if permissible.

Your request proposes that the Commission enter into an agreement with one or more pharmacies whereby the pharmacies will only require that the covered person pay his or her 20 percent share at the time of purchase with the balance due at the time he or she is reimbursed by LGHIP. You anticipate that pharmacies will only agree to such an arrangement if the Commission guarantees payment of any reimbursement amount not remitted by the covered person. Upon such default on the part of the covered person, the Commission would undertake to collect the amount so paid from the covered person.

It should be noted at the outset that according to the benefits manual for LGHIP, covered persons are only required to pay the full price of prescription medications at the time of purchase when the medication is non-generic. *Local Government Health Benefit Plan*, Local Government Plan, effective January 1, 2014, BlueCross Blue Shield of Alabama at 40. Thirty-day supplies of generic medications are subject only to a copay of \$5. *Id.* Thus, the scope of this opinion is limited to the proposal of the Commission to guarantee that covered persons will remit the reimbursement paid to him or her for brand-name drugs to the pharmacy.

Of particular concern to this Office is whether the implementation of your proposal would violate section 94 of the Constitution of Alabama. This section states as follows:

The Legislature shall not have power to authorize any county, city, town, or other subdivision of this state to lend its credit, or to grant public money or thing of value in aid of, or to any individual, association, or corporation whatsoever, or to become a stockholder in any corporation, association, or company, by issuing bonds or otherwise

ALA. CONST. art. IV, § 94 (amends. 112, 558).

In considering section 94, this Office has previously stated the following:

[Section 94] has been interpreted as “allowing the appropriation of public revenues in the aid of an individual, association, or corporation only when the appropriation is for a ‘public purpose.’”

“The paramount test should be whether the expenditure confers a direct public benefit of a reasonably general character, that is to say, to a significant part of the public, as distinguished from a remote and theoretical benefit. . . . The trend among the modern courts is to give the term ‘public purpose’ a broad expansive definition.”

Opinion to Honorable Brenda Gale Blalock, City Clerk, City of Montgomery, dated October 9, 2012, A.G. No. 2013-005 (internal citations omitted), *quoting Slawson v. Ala. Forestry Comm’n*, 631 So.2d 953, 956 (Ala. 1994).

The determination of whether a purpose is public depends on the statutes setting forth the powers of the entity contemplating the action. *Id.* Moreover, it is a well-established proposition of law that, as a political subdivision of the state, a county can exercise only that authority conferred on it by law. *Brown v. Bd. of Educ. of Montgomery*, 863 So. 2d 73, 76 (Ala. 2003).

The authority of the county to provide health insurance for its employees and retirees appears in sections 11-91-1 through 11-91-8 of the Code of Alabama. ALA. CODE §§ 11-91-1 to 11-91-8 (2008). The county may contract for and purchase insurance policies. ALA. CODE § 11-91-2 (2008). The county may determine the amount, nature, and kind of insurance to provide. ALA. CODE § 11-91-3 (2008). The county may pay all or part of the premiums for the insurance provided. ALA. CODE § 11-91-4 (2008). Nothing within these sections authorizes the county to guarantee a debt of its employees and retirees for prescription drug medications outside the benefit of the insurance policy provided by a county.

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CONCLUSION

The Mobile County Commission may not guarantee the debt of its employees and retirees for prescription drug medication outside the benefit of the insurance policy provided by the county.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE

Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH

Chief, Opinions Division

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